

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-C-910

NCR CORP. and APPLETON PAPERS INC. et al.,

Defendant.

CASE MANAGEMENT ORDER

The parties have submitted a joint report and discovery plan pursuant to Fed. R. Civ. P. 26(f). They have agreed that the case should proceed in phases, with the first being devoted to the Plaintiffs' fifth claim for relief. The parties disagree as to how Phase I should proceed. API and NCR believe that Phase I should initially focus on the question of divisibility. The other parties argue that there should be subphases, with a Phase 1a focusing not on divisibility but on whether the response action required by the UAO was arbitrary, capricious, or otherwise not in accordance with law. Any other issues would be put off into a Phase 1b.

I am satisfied that it makes sense to allow simultaneous discovery on both of the issues described above during Phase 1. To the extent there are significant costs involved in discovery on the divisibility question, these are costs that would likely be incurred at a future date in any event. Although I will grant API's and NCR's request to allow discovery on these other issues during Phase 1, I agree with Plaintiffs and certain of the Defendants that we should begin with a Phase 1a involving the response action required by the UAO. This subphase should not require significant

or any discovery. Any motion challenging the completeness or of the administrative record or seeking to supplement it shall be filed on or before May 4, 2012. In all other respects, I adopt the proposal of the parties contained in the joint report. If the parties have not already done so, they shall complete their required initial disclosures pursuant to Rule 26(a)(1) relating to Phase 1a issues (including divisibility) on or before April 1, 2012, unless otherwise stipulated. All Defendants who are non-UAO recipients are exempt from this requirement. If further scheduling is required, the parties should contact the Court.

SO ORDERED this 21st day of March, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge